

**State Board of Equalization**

**OPERATIONS MEMO**

For Public Release

No. : 1165

Date : April 2, 2009

**SUBJECT: In-State Voluntary Disclosures for Qualified Purchasers**

**I. GENERAL**

Effective January 1, 2009, Revenue and Taxation Code (RTC) section 6487.06 creates an In-State Voluntary Disclosure Program. The In-State Voluntary Disclosure Program created by RTC section 6487.06 is similar to the In-State Voluntary Disclosure Program that was in effect for the period January 1, 2004, through December 31, 2007. This program provides for voluntary disclosures of tangible personal property purchased for use in California by qualified purchasers. Purchasers within California, who are not otherwise required to hold a seller's permit, may register and report their use tax liability with a three-year statute of limitations.

**II. QUALIFIED PURCHASERS**

For purposes of this program, qualified purchasers must meet all of the following conditions:

- They reside or are located within California, and they have not previously registered with the Board of Equalization (BOE);
- They have not previously filed an Individual Use Tax Return with the BOE;
- They have not reported an amount for use tax on their Individual Income Tax Return;
- They are not engaged in business in California as a retailer, as defined in RTC section 6015 of the Revenue and Taxation Code;
- They have not been contacted by the BOE for failure to report the use tax imposed by RTC section 6202 of the Revenue and Taxation Code;
- Their purchase is not of a vehicle, vessel or aircraft;
- They voluntarily come forward to the BOE.

**III. DISTRICT OFFICE RESPONSIBILITIES**

**A. Application Review**

Applicants under this program will complete and submit form BOE-38-I, *Application for In-State Voluntary Disclosure*, and form BOE-400-CSU, *California Consumer Use Tax Account Application*. District offices will review the application for completeness and ensure the qualifications in Section II above are met. District staff should search the Integrated Revenue Information System (IRIS) to determine whether the applicant has

had a previous arbitrary account issued. As provided in Section II, applicants are not considered qualified purchasers if, among other conditions, they have previously registered or filed an Individual Use Tax Return with the BOE or reported an amount for use tax on their individual income tax return. If the district office wishes to verify if the applicant has reported an amount for use tax on their individual income tax return, the district office should obtain this information from the applicant. Filing an amount of zero on the individual income tax return does not disqualify the applicant.

The Sales and Use Tax Department is conducting several ongoing programs designed to increase sales and use tax compliance (for example, Statewide Compliance and Outreach Program (SCOP) and Tax Gap activities). As such, verification that applicants have not been previously contacted by the BOE for failure to report use tax is necessary. The contact information for these programs is maintained in separate databases which are not available for district staff review. Therefore, as part of the applicant verification process, district staff must provide the Audit Support Unit (ASU), via email to [voluntary.disclosure@boe.ca.gov](mailto:voluntary.disclosure@boe.ca.gov), the name, address, and any other contact information regarding the applicant. ASU staff will facilitate the database search to verify whether the applicant has been contacted by the BOE through current tax compliance efforts and then notify the district office of the results via e-mail.

#### B. Individual Use Tax Returns versus Consumer Use Tax Section Billings

When a taxpayer registers for a Consumer Use Tax account (SU) and files an Individual Use Tax Return, these are affirmative and voluntary actions that disqualify the taxpayer from the In-State Voluntary Disclosure Program. This is in contrast to Consumer Use Tax Section (CUTS) billings, i.e., the specific use tax programs administered by CUTS relating to vehicles, vessels and aircraft transactions.<sup>1</sup> A CUTS billing is not in itself enough to disqualify the taxpayer from consideration under the In-State Voluntary Disclosure Program, notwithstanding all of the requirements under RTC section 6487.06. Therefore, applications for the In-State Voluntary Disclosure Program will be considered for inclusion in the program when the applicant has previously received a CUTS billing generated in response to investigations of purchases of vehicles, vessels and aircraft.

#### C. Applicant Does Not Qualify

District offices will review the application for completeness and ensure the qualifications in Section II above are met. If, after review of the application, the district deems any of the requirements for participation in the In-State Voluntary Disclosure Program are not met, district staff must forward the application and any information regarding the

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<sup>1</sup> TAT indicators SA, SB and SP. For these specific transactions, to ensure compliance with the Use Tax Law, CUTS staff investigates the source leads generated from other agencies for potential use tax liabilities. CUTS staff initiates the setup of the purchaser's account number and mails a cover letter and use tax return to the purchaser. If the purchaser does not respond, CUTS staff issues a billing to the purchaser. Despite the taxpayer's subsequent remittance of use tax, and because of the one-time nature of these transactions, CUTS billings do not come within the meaning of the term "registration" as provided by RTC section 6487.06.

applicant's disqualification to the Supervisor of the Audit and Information Section (AIS) for review. The AIS Supervisor or designee will review the information and then notify the district office as to whether the applicant should be denied participation in the program. However, if the applicant is deemed not to qualify for participation in the program due to the database search performed by ASU, district staff should not forward the application to the AIS Supervisor for review as no further review by the AIS Supervisor is necessary.

In the event the applicant does not qualify under RTC section 6487.06, the applicant must be so notified in writing. In addition to facilitating the database search to verify whether the applicant has been contacted by the BOE through current tax compliance efforts, ASU will also assist with any questions regarding whether the applicant meets all of the requirements for participation in the program.

#### D. Acceptance and Registration

Once an application is accepted, staff must register the taxpayer in IRIS with an SU permit and an account characteristic code 23, *In-State Voluntary Disclosure*. Account characteristic code 17 should not be used for this program as it is used to track the out-of-state voluntary disclosures under section 6487.05. A taxpayer who does not anticipate having a continuing use tax obligation (for example, if they have moved out of state or closed their business) should have their account closed-out on the date the registration is processed. Generally, staff should presume the taxpayer will have a continuing obligation and leave the account open. The taxpayer's reporting basis should be determined based upon the taxpayer's estimated measure of use tax liability in accordance with Compliance Policy and Procedures Manual (CPPM) section 235.000. The taxpayer's start date should be no earlier than the taxpayer's oldest purchase subject to use tax that is within the three-year statute of limitations. Once the BOE-400-CSU is processed, it should be forwarded along with the BOE-38-I to the Taxpayer Records Unit with a copy of each retained by the district.

The BOE-38-I, *Application for In-State Voluntary Disclosure*, has been revised to include a section where the applicant can request relief of penalty. Therefore, the applicant is no longer required to submit a separate BOE-735, *Request for Relief from Penalty*.

District staff should provide the taxpayer with return forms. Taxpayers should submit the completed returns along with a payment for the total amount of tax due. For the initial returns received under the In-State Voluntary Disclosure Program, staff will write "In-State Voluntary Disclosure Account – Relief of Penalty Submitted" on the top front page of the return. Field staff will forward the returns to the Cashier Unit for processing and will retain a copy of the BOE-38-I until the tax for all periods has been paid in full.

#### E. Requests for Relief from Penalty

BOE--38-I will be processed as a request for relief of penalty under RTC section 6592. Once the taxpayer has paid the tax due in full, a copy of the BOE-38-I along with a cover memo stating the account qualifies for relief under the In-State Voluntary Disclosure Program should be forwarded to the Return Analysis Unit (RAU) for processing. When applicable, a note should be made in IRIS and in the Automated Compliance Management System (ACMS) indicating that district staff are holding a BOE-38-I containing a request for relief from penalty pending full payment of tax. In addition, once the tax is paid, the district should routinely follow up to ensure BOE-38-I's are forwarded to RAU in a timely manner.

Consistent with collection of other tax liabilities, installment payment agreements and streamlined installment payment agreements are permitted when the applicant meets the criteria as outlined in CPPM sections 707.000 and 708.000. In the event the taxpayer defaults on the terms of a documented installment payment agreement or a streamlined installment payment agreement, relief of penalties will not be granted. Additionally, if any other collection actions are necessary to secure payment of the use tax, relief of penalties will not be granted.

In the event relief of penalties are not warranted due to default on an installment payment agreement or collection actions are taken against the applicant, appropriate comments should be made in IRIS and ACMS. Additionally, the applicant must be notified in writing that the request for relief of penalties is being denied. Under these circumstances, the BOE-38-I containing the relief from penalty request should not be forwarded to RAU since no adjustment is warranted.

#### F. Requests for Relief of Interest

Interest relief may not be granted through the In-State Voluntary Disclosure Program.

### **IV. CASHIER UNIT RESPONSIBILITIES**

The returns for the In-State Voluntary Disclosure Program will be assigned the batch type SUV. They will be processed with the same priority as SU accounts.

In the event an In-State Voluntary Disclosure Program application (BOE-38-I) is received in addition to a payment, an arbitrary account number should be assigned and the payment processed accordingly. The application documents should then be forwarded to the appropriate district office for creation of an SU account and processing of the In-State Voluntary Disclosure Program application.

### **V. RETURN ANALYSIS UNIT RESPONSIBILITIES**

#### A. Billings

The initial billing derived from the returns should be identified as a statement of account rather than a demand notice, even if the tax has not been paid in full. Staff should not send letters to the taxpayer with regard to errors on the In-State Voluntary Disclosure returns. Any problems found should be brought to the attention of the RAU Supervisor and decisions to contact the district office or the taxpayer should be made on a case-by-case basis.

**B. Requests for Relief from Penalty**

When the request for relief from penalty is received in RAU, and no single period is over \$50,000, it will be processed on a short form, RA-650-V, *Request for Relief of Penalty, Voluntary Disclosure*. The RA-650-V form is available as an additional tab in the Microsoft Excel spreadsheet containing the regular RA-650 form. As usual, the approval level will be determined by the largest individual penalty. The period covered by all returns for which relief is being granted should be noted in the "Period" field, and the total penalty amount should be entered in the "Total Penalty" field.

The only account review required is the confirmation of the Account Characteristic Code 23. The relief request, the memorandum stating the account qualifies for relief under the In-State Voluntary Disclosure Program, and the appropriate IRIS printouts should be attached to the RA-650-V and submitted for approval after processing the request in DIF RR. No warning letter should be sent.

If the penalty for any one period is \$50,000 or more, the request should be processed as described in sections 860.840 or 860.850 of the RAU manual.

**VI. AUDIT AND INFORMATION SECTION RESPONSIBILITIES**

The AIS Supervisor or designee is responsible for reviewing any applications that the district office deems not qualified for participation in the program. After review of the information provided by the district office, the AIS Supervisor will notify the district office whether the applicant should be accepted or denied participation in the In-State Voluntary Disclosure Program. However, as previously stated, if the applicant is deemed not to qualify for participation in the program due to the database search performed by ASU, district staff should not forward the application to the AIS Supervisor for review as no further review by the AIS Supervisor is necessary.

ASU is responsible for providing advice to the districts on complex cases where it is unclear whether the applicant qualifies under RTC section 6487.06. In addition, ASU staff will respond to written inquiries requesting an opinion as to whether or not an anonymous applicant will qualify under this section.

ASU is also responsible for coordinating the verification of whether an applicant has been previously contacted by the BOE as part of sales and use tax compliance efforts (for example, SCOP and Tax Gap activities). Applicant information provided by a district

office to the voluntary.disclosure@boe.ca.gov e-mail box must be checked against all available non-IRIS databases maintained by the Sales and Use Tax Department to verify previous BOE contact. ASU staff will forward the verification results to the requesting district within ten business days of receiving the request. These requests will be given priority in order to avoid delays in application processing.

## **VII. OBSOLESCENCE**

This Operations Memo will become obsolete when the information contained herein is incorporated into the appropriate manuals.

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